

FILED
Clerk
District Court

APR 17 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

ERIC S. SMITH, Bar No. F 0157
SMITH & WILLIAMS
Attorneys at Law
P.O. Box 5133 CHRB
Saipan MP 96950
Tel: 233-3334
Fax: 233-3336

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

ALAN STUART MARKOFF, D.D.S.dba
TOOTHWORKS and OPEN CHOICE,

Plaintiff,

vs.

TODD KEITH JOHNSON, D.D.S.

Defendant.

CIVIL ACTION NO. CV-05-0035


**NOTICE OF FILING SIGNED
DECLARATION OF ERIC S. SMITH**

Date: N/A
Time: N/A
Judge: Munson

Plaintiff hereby gives notice to the Court of the filing of the signed Declaration of Eric S. Smith in support of Plaintiff's Opposition to Motion to Stay. The declaration was filed on March 30, 2006 (containing all exhibits), without Eric S. Smith's signature.

RESPECTFULLY SUBMITTED.

Date: April 17, 2006


ERIC S. SMITH
Attorney for Plaintiff

1 ERIC S. SMITH, Bar No. F 0157
SMITH & WILLIAMS
2 Attorneys at Law
P.O. Box 5133 CHRB
3 Saipan MP 96950
Tel: 233-3334
4 Fax: 233-3336

5 Attorneys for Plaintiff

6
7
8 IN THE UNITED STATES DISTRICT COURT
FOR THE
9 NORTHERN MARIANA ISLANDS

10
11 ALAN STUART MARKOFF, D.D.S.dba
TOOTHWORKS and OPEN CHOICE,

12 Plaintiff,

13 vs.

14
15 TODD KEITH JOHNSON, D.D.S.

16 Defendant.

CIVIL ACTION NO. CV-05-0035

**DECLARATION OF
ERIC S. SMITH
IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
MOTION TO STAY**

17 Date: April 13, 2006
Time: 9:00 a.m

18
19 I, ERIC S. SMITH, declare under penalty of perjury as follows:

- 20 1. I am one of the attorneys for Dr. Alan S. Markoff in the above captioned matter.
21 2. On or about February 10, 2005, Smith & Williams was retained by Dr. Alan Stuart
22 Markoff to represent him in his claims against Dr. Todd K. Johnson, for a material
23 breach of an Agreement for the Purchase and Sale of a Dental Practice
24 ("Agreement"), executed by him and Dr. Johnson on September 15, 2004.
25 3. On or about April 15, 2005, we sent a letter to Dr. Johnson informing him of Dr.
26 Markoff's claims, stating among other things, that the contents of the financial
27 information he provided to Dr. Markoff for the sale of the dental clinic did not
28 correctly reflect the financial affairs of the business. A true and correct copy of the

1 letter is attached hereto as Exhibit "1."

2 4. The letter was sent to Dr. Johnson via certified mail with a return receipt request at
3 his address stated in the Agreement, which is c/o Dee Johnson, 13901 N.E. 8th ,
4 Choctaw, Oklahoma 73020.

5 5. On or about May 6, 2005, after not hearing from Dr. Johnson, we sent the letter to
6 Dr. Johnson's email address at todd@johnsonpools.net. This email address was
7 provided by Dr. Johnson to Plaintiff. A true and correct copy of the email is attached
8 hereto as Exhibit "2."

9 6. On or about May 20, 2005, the letter which was sent via certified mail to Dr. Johnson
10 returned with a stamp "Unclaimed" by the U.S. Postal Services. A true correct copy
11 of the envelope containing the letter is attached hereto as Exhibit "3."

12 7. On or about May 23, 2005, Plaintiff received a response from Dr. Johnson via email.
13 A true and correct copy of the email is attached hereto as Exhibit "4."

14 8. Dr. Johnson has not communicated with Smith & Williams directly regarding this
15 matter.

16 9. After May 23, 2005, Plaintiff did not receive any word from Dr. Johnson.

17 10. Sometime in September 2005, Dr. Markoff informed us that his accountant in Texas
18 found a listing in The Houston Business Journal September 2005 edition that Dr.
19 Johnson filed a lawsuit against him.

20 11. Plaintiff was in Houston from September 28, 2005 to October 20, 2005 but he was
21 not served with the complaint.

22 12. On or about November 4, 2005, Plaintiff decided to file a complaint against Dr.
23 Johnson in the U.S. District Court in Saipan.

24 13. On December 6, 2005, Dr. Johnson was served with the Summons and Complaint in
25 Oklahoma City. A true and correct copy of the Affidavit of Service is attached hereto
26 as Exhibit "5."

14. On or about January 6, 2005, David Banes, who was retained as legal counsel for Dr. Johnson, called our office to request for an extension to file a response to the complaint, which was due on December 26, 2005.


15. In the spirit of cooperation, and in an attempt to negotiate a settlement before time and effort was expended on discovery and motions in the early stages of litigation, we consented to Mr. Banes' request and agreed that his response would be due on January 16, 2006. A true and correct copy of a stipulation reflecting the new date is attached hereto as Exhibit "6."

16. On January 16, 2006, Mr. Banes called to let us know that he was filing a motion to strike Plaintiff's fraud allegation. He filed the motion on January 17, 2006 - one day late.

17. After the Court's decision was issued permitting Plaintiff a week to file an amended complaint, Plaintiff filed an amended complaint on February 24, 2006.

18. Defendant's answer was due on March 16, 2006 but he filed it on March 20, 2006 - four days late.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on March 30, 2006, at Garapan, Saipan, Commonwealth of the Northern Mariana Islands.


ERIC S. SMITH
Declarant